

State

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CAPITAL CASE JURY INSTRUCTIONS

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V1300CR201080049

**Capital Case 1.6(c) – Definition for “Consideration for the Receipt, or in Expectation of the Receipt, of Anything of Pecuniary Value”**

In order to find this aggravating circumstance, you must find that the State has proven beyond a reasonable doubt that the defendant's motive, cause or impetus for the commission of the ~~first-degree murder~~ was consideration for the receipt, or the expectation of receipt of pecuniary value. This finding may be based on tangible evidence and/or [strong] circumstantial evidence. “Pecuniary value” may be money or property.

Mere taking of items of value before, during or after the ~~first-degree murder~~ is not enough to establish this aggravating circumstance.

You need not find that consideration for the receipt, or the expectation of the receipt of, the pecuniary value was the sole motivation or cause of the ~~first-degree murder~~ in order to find that this circumstance exists. However, the existence of a pecuniary motive at some point during the events surrounding the first-degree murder is not enough to establish this aggravating circumstance. There must be a connection between the motive and the killing. The mere fact that the person was killed, and the defendant made a financial gain, does not by itself establish this aggravating circumstance.

[While a conviction of robbery or burglary indicates a taking of property, the conviction does not itself prove that the motivation for the killing was the consideration for the receipt, or the expectation of, the receipt of pecuniary value.]

**SOURCE:** A.R.S. § 13-703(F)(5) (statutory language as of October 1, 1978); “[A] conviction for felony murder predicated on robbery or armed robbery does not automatically prove the (F)(5) aggravator.” *State v. Anderson (II)*, 210 Ariz. 327, 341-42, 111 P.3d 369, 383-84 (2005) (where the court also stated that, “the superior court properly instructed the jury on this aggravating factor” where the (F)(5) instruction included the language, “[a] finding of pecuniary gain may be based on tangible evidence or strong circumstantial evidence,” and the court was reviewing whether a misstatement of the law regarding the (F)(5) circumstance by the prosecutor should cause a reversal (emphasis added)); *State v. Carreon*, 210 Ariz. 54, 67, 107 P.3d 900, 913 (2005) (holding that, “[t]he finding of pecuniary gain may be based on tangible evidence or strong circumstantial evidence.”); *State v. Moody*, 208 Ariz. 424, 471, 94 P.3d 1119, 1166 (2004) (holding that the expectation of pecuniary gain must be a, “motive, cause or impetus for the murder, and not merely a result of the murder[,]” and that the State is required to, “establish the connection between the murder and the motive through direct or strong circumstantial evidence.”); *State v. Armstrong*, 208 Ariz. 360, 363 n.2, 93 P.3d 1076, 1079 n.2 (2004) (rejecting “but for” requirement, i.e., receipt of item(s) of pecuniary value need not be the *only* cause of the murder); *State v. Sansing*, 200 Ariz. 347, 353, 356, 26 P.3d 1118, 1124, 1127 (2001) (holding that to prove the (F)(5) circumstance, the State must prove, “a connection between a pecuniary motive and the killing itself; the expectation of pecuniary gain must be a motive for the murder[.]” “[w]e reserve the death penalty for murders committed during a robbery or burglary for those cases in which the facts clearly indicate a connection between a pecuniary motive and the killing itself[.]” and that, “[t]he murder, which occurred at least an hour after the victim's arrival, did not facilitate the defendant's